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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF ALASKA**
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11 **JTS, LLC dba Johnson's Tire Service,**)
12 **Plaintiff,**) **3:14 -cv-254 JWS**
13 **vs.**) **ORDER AND OPINION**
14 **Nokian Tyres PLC, and Nokian Tyres,**) **[Re: Motions at**
15 **Inc.,**) **Dockets 104 and 116]**
16 **Defendants.**)
17 _____)

18 **I. MOTIONS PRESENTED**

19 At docket 104 defendants Nokian Tyres, PLC and Nokian Tyres, Inc. (collectively
20 "Nokian") moved for summary judgment against plaintiff JTS, LLC ("JTS"). JTS'
21 response was due on January 20, 2017. No response was filed.

22 A week after the response was due, on January 27, 2017 at docket 116, JTS
23 moved for an extension of time in which to respond to the motion for summary
24 judgment at docket 104. The motion was supported at docket 117 by the Declaration of
25 Christopher V. Hoke, JTS' lawyer. Nokian responded at docket 120. JTS did not file a
26 reply. Oral argument was not requested, and it would not assist the court.

26 **II BACKGROUND**

27 The background of this lawsuit was set out in the court's order at docket 33. It
28 need not be repeated here. For present purposes, the following points should be

1 noted. First, the claims made by JTS against Nokian are for breach of contract, breach
2 of the covenant of good faith and fair dealing, and violation of the Alaska Unfair Trade
3 Practices Act. Second, Nokian's motion for summary judgment on those claims was
4 filed on December 30, 2016. Third, under the applicable local rule, JTS' response was
5 due on January 20, 2017. Fourth, JTS did not request to extend the time for the
6 response beyond January 20, 2017, until it filed the motion at docket 116 on
7 January 27, 2017.

8 III. DISCUSSION

9 Rule 56(d) of the Federal Rules of Civil Procedure provides that where the non-
10 moving party "shows by affidavit or declaration that, for specified reasons, it cannot
11 present facts essential to justify its opposition," then the court may, among other things,
12 allow the non-moving party more time, the relief JTS seeks here. Rule 6(b) of the
13 Federal Rules of Civil Procedure provides that where something must be done within a
14 specific time, the court may extend the time for good cause "where the request is made,
15 before the original time or its extension expires." However, where, as here, the request
16 to extend time is made after the time has expired, the requesting party must show
17 excusable neglect. There is nothing in the motion at docket 116 or in Mr. Hoke's
18 declaration which addresses the concept of excusable neglect. Rather, the papers
19 read as if the request to extend time had been made before time expired and, thus,
20 they focus exclusively on showing good cause why essential facts cannot be presented
21 without additional time. For this reason, the motion at docket 116 should be denied.

22 Even overlooking JTS' failure to show excusable neglect, the motion at
23 docket 116 lacks merit. JTS' lawyer argues that he needs more time in order to make
24 use of facts to be obtained at the depositions of Bernie Del Luca and Dennis Gaede
25 noticed for January 30, 2017. The suggestion that more time is needed to obtain
26 information from Dennis Gaede is belied by the fact that Mr. Gaede is JTS' own expert
27 witness from whom JTS could have obtained an affidavit or declaration at any time after
28 seeing the motion made by Nokian, with the possible exception of an opinion based on
Del Luca's testimony. Thus, the focus is on Del Luca's testimony. Concerning Del
Luca, JTS points out that at his January 12, 2017 deposition, Del Luca gave testimony

1 which would support an anti-trust claim against Nokian. Counsel explained, “the bulk of
2 plaintiff’s opposition is completed regarding contracts and unfair trade practices
3 analysis, [but] counsel requires additional time to study the [Del Luca testimony] and the
4 unlawful nature of the vertical restraints placed on [JTS] by Nokian, and testimony of
5 Dennis Gaede to be received on 1/30/17.” There is no anti-trust claim pending in this
6 lawsuit, and JTS has not specified a reason why the additional evidence is essential to
7 dispute Nokian’s motion for summary judgment on the claims which actually are being
8 litigated. In the Hoke declaration, one additional item is noted. Hoke says that Nokian
9 has not responded to discovery requests which JTS propounded. Neither in the
10 declaration nor in the motion is there any indication of what was being sought or why it
11 would be evidence essential to opposing the motion for summary judgment.

12 The court now turns to the unopposed motion for summary judgment at
13 docket 104. An examination shows that the motion is well reasoned and well
14 supported. It has not been timely opposed. Because the motion at docket 104 appears
15 to have merit on the record before the court, it should be granted.

16 **V. CONCLUSION**

17 For the reasons above, the motion at docket 116 is DENIED, and the motion for
18 summary judgment at docket 104 is GRANTED. All other pending motions are denied
19 as moot. The Clerk will please enter judgment for the defendants.

20 DATED this 13th day of February 2017.

21 /s/ JOHN W. SEDWICK
22 SENIOR JUDGE, UNITED STATES DISTRICT COURT
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